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UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT
11
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 TEOFIL BRANK,
aka "Jarec Wentworth,"
17 aka "@JarecWentworth,"

18 Defendant.

CR No. 15-131(A)-JFW

GOVERNMENT'S SENTENCING POSITION

Hearing Date: October 26, 2015

Hearing Time: 9:00 a.m.

Location: Courtroom of the
Honorable John F.
Walter

19
20 Plaintiff United States of America, by and through its counsel
21 of record, the United States Attorney for the Central District of
22 California and Assistant United States Attorneys Kimberly D. Jaimez
23 and Eddie A. Jauregui, hereby files its sentencing position as to
24 defendant Teofil Brank.

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1 The government's position is based upon the attached memorandum
2 of points and authorities, exhibits, the files and records in this
3 case, and such further evidence and argument as the Court may permit.

4 Dated: October 9, 2015

Respectfully submitted,

5 EILEEN M. DECKER
United States Attorney

6 LAWRENCE S. MIDDLETON
7 Assistant United States Attorney
Chief, Criminal Division

8
9 /s/

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On July 9, 2015, a jury convicted defendant Teofil Brank ("defendant") of six counts relating to the extortion and attempted extortion of victim D.B. for over \$1.5 million in cash and real property. Those counts were: (i) transmitting threatening communications with intent to extort, in violation of 18 U.S.C. § 875(d) (count one); (ii) extortion and attempted extortion affecting interstate commerce, in violation of 18 U.S.C. § 1951(a) (counts two and five); (iii) receiving proceeds of extortion, in violation of 18 U.S.C. § 880 (counts three and four); and (iv) use of an interstate facility to facilitate an unlawful activity, in violation of 18 U.S.C. § 1952(a)(3) (count six). As the Court is well aware from the pre-trial litigation in this case and the trial itself, defendant threatened to publicly disclose the details of D.B.'s private, sexual life via Twitter if D.B. did not meet defendant's demands for large sums of money. The evidence at trial was overwhelming and at the conclusion of the case, the jury quickly voted to convict defendant on all counts.

On August 14, 2015, the United States Probation Office ("Probation Office") disclosed its initial Presentence Report ("PSR") and Recommendation (Dkt. Nos. 309, 310), and on September 14, 2015, the Probation Office revised the PSR and disclosed an Addendum thereto (Dkt. Nos. 320, 321). The Probation Office determined that, based on a total offense level of 25 and a criminal history category of III, defendant's Guidelines imprisonment range was 70-87 months. The Probation Office recommended a low-end sentence of 70 months and a three-year period of supervised release. (See USPO Recommendation

1 Letter, Dkt. 309.) Restitution in this case is mandatory and proper
2 restitution amount is \$500,000. (Id.)

3 The government submits that an appropriate custodial sentence in
4 this case is 80 months of imprisonment. As discussed below, the
5 nature and circumstances of the offense, the history and
6 characteristics of the defendant, and the need for the sentence to
7 promote respect for the law and provide just punishment, warrant a
8 substantial sentence in this case, one above the low-end of the
9 advisory Guidelines range. Defendant's conduct was vengeful and
10 intentional, and he caused great emotional harm to the victim.
11 Moreover, defendant has failed to show any remorse for his actions
12 and, while he was detained pending trial, he sought to inflict more
13 pain on the victim and garner more fame for himself. Considering the
14 totality of the circumstances, including defendant's decision to
15 procure a firearm and take it to the scene of the attempted
16 extortion, a fair and just sentence for this defendant is 80 months
17 in prison.

18 **II. STATEMENT OF FACTS**

19 The victim in this case met the defendant, a former pornographic
20 actor and male escort, through a pay-for-sex encounter in 2013. (RT,
21 Dkt. 296-2, 79:3-13, 117:22 to 118:7).¹ As established at trial, the
22 victim, D.B., was a wealthy telecommunications executive who moved in
23 influential circles and had an interest in younger, attractive men
24 who were pornographic actors. After their initial meeting, D.B.
25 began paying defendant to refer other pornographic actors and escorts
26

27 ¹ "RT" refers to the reporter's transcripts of the trial, which
28 were filed by defendant at Docket No. 296 in five parts. Citations
include the relevant docket entry followed by the page number.

1 to him for sexual trysts. (RT, 296-2, 79:7-80:13.) D.B. continued
 2 to pay defendant for sex as well. Over the course of 2013-2014, D.B.
 3 paid defendant for sex about four times and for sex "referrals" about
 4 the same number of times. (RT, 296-2, 122:3-16). In each instance,
 5 defendant received roughly \$1,500 to \$2,000. (RT, 296-2, 123:3-5.)

6 The arrangement between D.B. and defendant began to unravel in
 7 early 2015, when defendant refused to pay back a referral fee for a
 8 sexual encounter that never came to be. (RT 296-2, 80:21-81:3.) The
 9 catalyst for this unraveling appeared to be D.B.'s telling defendant
 10 that he did not think they could have a "working" relationship any
 11 longer. (RT, 296-2, 84:1-24.) D.B.'s comment triggered an angry and
 12 forceful response from defendant, who proceeded to send D.B. a stream
 13 of threatening text messages, warning D.B. that he was "feeling evil"
 14 and could bring D.B.'s "house down." (RT 296-2, 83:1-95:8.) More
 15 specifically, defendant warned D.B. that he had a Twitter account and
 16 that "lies can be made" and truths told through that medium. (RT
 17 296-2, 85:20-22.)

18 The defendant's text messages to D.B. speak volumes about the
 19 defendant's intent, as well as his nature and characteristics:

- 20 • Be wise on How you reply. **I can bring your house down [D.].**
 21 This was a simple conversation and you throw this Shit out
 22 on me. **Don't get me mad.** I do have a twitter and your
 23 photos. **Lies can be made or Maybe it's the truth.** Just
 24 saying. Have a good day. (Items 376-373.)
- 25 • You promised me you would Let me drive the r8. Cars are my
 26 life you know that. Show Im Nothing to you. Promises
 27 broken. **I'm feeling evil right now.** Disappointed. (Items
 28 358-355.)
- Check my twitter, the conversation will grown and questions
 will be asked. You lied to me and treated me like Shit. I
 asked again and you put it behind you. Now it's biting
 your ass. **I think by the time I'm out of the gym you will**

1 **have a Sweet treat for me that will make me erase my tweet.**
 2 **Think hard. You know me right.** (Items 347-349).

- 3 • I can't get a friendship anymore, because **will who want to**
 4 **be friends with black mail.** . . . I guess finding you boys
 5 is out of the picture So it leaves me with Nothing to want
 6 out of this. **So I'm just going to bite hard.** You got money
 7 but I Don't want that. Money won't wash away What people
 will read and see of you. **Wow I guess I hold the cards**
 right now. And trust me the other guys will stand with me.
 (Items 344-345.)

- 8 • New deal, new deal (Items 107-106)

- 9 • Account will be deleted if new deal is reached. (Item 101)

- 10 • I want a condo here in LA. Bachelor pad. You have a taste I
 11 like. 2 bed Max. Perfer one. I want 300,000.00 cash. You
 12 can and will. I want this over ASAP like yesterday. So you
 can be at peace. (Item 92)

- 13 • They go for more though (Item 90)

- 14 • 1 mill cash (Item 89)

15 (See Excerpt of Trial Ex. 108, redacted for victim's name and
 16 telephone number, attached as Ex. 1) (emphases added).²

17 The defendant did not rely solely on private text messages to
 18 convey threats to D.B., however. He took it a step further; he
 19 published a message on Twitter asking his thousands of Twitter
 20 followers: "Do any porn stars know a guy named [D.], yes [D.]." (RT,
 21 296-2, 96:2-6.) As D.B. testified at trial, he became sick to his
 22 stomach upon learning this and started shaking, and he was "scared to
 23 the core" about what defendant would do next. (RT, 296-2, 96:15-20,
 24 105:3-9.) Wanting to avoid public humiliation, D.B. gave in to the
 25 defendant's demands. D.B. wired defendant \$500,000 and gave him his
 26

27 ² Please note that the text messages appear in reverse
 28 chronological order, with the more recent text messages appearing
 first.

1 Audi r8, which was valued at approximately \$180,000, because D.B.
2 believed defendant would go through with his threat and expose his
3 secret: that he was paying gay porn stars and prostitutes for sex,
4 sometimes in groups, and frequently. (RT, 296-2, 101:16-23, 102:5-
5 14, 104:5-12, 111:4-8.)

6 The government will not repeat the entire trial testimony here,
7 but as the Court knows, defendant tried to extort D.B. for another
8 million dollars after he had successfully extorted D.B. the first
9 time. In the run-up to the attempted extortion on March 4, 2015,
10 defendant obtained a .357 Colt Python revolver and brought it with
11 him to the Starbucks where the extortion was to take place. (PSR
12 ¶ 16.) Defendant told the victim over the phone that he was not
13 coming alone and that if anything should happen, he had what he
14 needed "for anything else" (Id.) Moreover, defendant's
15 friend and companion that evening, Etienne Yim, testified at trial
16 that defendant told him to shoot if anyone started shooting. (RT,
17 Dkt. 296-4, 109:6-10.) The defendant was dead set on collecting \$1
18 million that evening and if anything should go wrong - if the "fed"
19 should show up, for example - defendant was prepared to use force.
20 (See Ex. 2, at 3:23-24)

21 Ultimately, the defendant was arrested, but he didn't stop
22 trying to harm D.B. The defendant tried, and ultimately did, get a
23 statement to the media purporting to be innocent and accusing D.B. of
24 criminal acts. Among other things, defendant suggested that D.B. had
25 raped him and was a predator. (See Exs. 3 and 4.)³ He also falsely
26

27 ³ Exhibit 2 is an April 4, 2015, email from defendant to
28 Christina Buholtz containing the text of what a letter published in a
(footnote cont'd on next page)

1 suggested that D.B. had sexual contact with minors, as the Court
2 knows from the in limine motions in this case. (Dkt. 61) At the
3 same time, defendant sought to deliver a mea culpa to D.B., hoping
4 that D.B. would "drop" the charges against him. (See discussion
5 infra.)

6 **III. THE PRESENTENCE REPORT**

7 The PSR calculates defendant's total offense level as 25 and
8 criminal history category as III, with a resulting advisory
9 guidelines range of 70 to 87 months in prison. (PSR ¶ 102.) The PSR
10 groups the offenses for which defendant was convicted into two groups
11 - one for the extortion-related counts (Group A) and the other for
12 the attempted extortion counts (Group B). (PSR ¶¶ 25-46.) Each
13 group carries a base offense level of 9 and is enhanced 14 levels
14 because of the amount extorted or demanded by the defendant. (PSR
15 ¶¶ 30, 37.) Thereafter, a two-level enhancement is added to reflect
16 the number of "units" grouped together, resulting in a total offense
17 level of 25. (PSR ¶ 42.) The government concurs in the Probation
18 Office's analysis and offense level calculation.

19 As to criminal history: defendant was convicted in 2008 for
20 domestic violence, and served 120 days in jail for abusing his then-
21 girlfriend and future wife.⁴ (PSR ¶ 51.) Defendant earned two
22 criminal history points for this conviction. (Id.) Defendant earned
23 another two points for convictions in 2008 and 2010 for driving under
24 the influence and driving with a suspended license, respectively.

25
26 blog called Str8upgayporn.com. Exhibit 3 contains images of the
letter as published on Str8upgayporn.com.

27 ⁴ The following year, defendant was arrested for battery against
28 a spouse or cohabitant but that count was dismissed. According to
the PSR, a description of the offense is unavailable. (PSR ¶ 59.)

(PSR ¶¶ 52-53.) Because defendant committed the instant crimes while on probation, defendant's criminal history points total six, placing him in criminal history category III.⁵ (PSR ¶¶ 57-58.) The government concurs in the Probation Office's determination of defendant's criminal history. Finally, the government agrees with the Probation Office that, given the total offense level and defendant's criminal history, the advisory Guidelines range applicable is 70 to 87 months. (PSR ¶ 102.)

IV. THE GOVERNMENT'S SENTENCING POSITION

The government recommends that the Court impose a sentence of 80 months of imprisonment, followed by a three-year period of supervised release, and a special assessment of \$600. The government submits that such a sentence is sufficient, but not greater than necessary, to address the offenses at issue, taking into account all the factors the Court must consider under 18 U.S.C. § 3553(a). See United States v. Booker, 543 U.S. 220, 260 (2005).

A. The nature and circumstances of the offenses and defendant's history and characteristics justify an 80-month prison sentence.

1. Nature and circumstances of the offense

The nature and circumstances of defendant's offenses warrant a sentence of 80 months of imprisonment. In mid-February 2015, the defendant successfully extorted the victim of a half million and a vehicle worth \$180,000. He did so by exploiting the victim's fears and threatening to expose the most intimate details of the victim's

⁵ Not captured in defendant's criminal history is his admitted use of steroids, cocaine, marijuana, and ecstasy. (PSR ¶¶ 81-84.) Defendant admitted to the Probation Office that he had used cocaine approximately 30 times in the past year alone. (Id. at ¶ 83.)

1 private life to the public via Twitter. The defendant was a
2 relatively well-known pornographic actor with thousands of Twitter
3 "followers." (Dkt. 296-3, 80:6-9.) The victim, a businessman, was
4 well known in wealthy and influential circles, and he feared the
5 shame and public humiliation that would accompany disclosure of his
6 private sexual proclivities and engagement with prostitutes.⁶

7 The defendant capitalized on this fear. Not only did he obtain
8 a half million dollars and a car from D.B. relatively easily in
9 February 2015, he came back for more. Seeking a "new deal,"
10 defendant demanded a full million dollars and the title to D.B.'s
11 Audi r8. And in order to ensure that things went smoothly, defendant
12 procured a gun and brought it with him to the scene of the attempted
13 extortion, along with ammunition. The fact that defendant came armed
14 to the extortion demonstrated that he was willing to deploy violence
15 to ensure successful completion of his scheme. Defendant's conduct
16 was opportunistic, lawless, and dangerous, and it was motivated by
17 greed. Such conduct merits serious punishment.

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20 ⁶ At trial, the victim testified that he was especially
concerned about this information being disclosed online:

21 The truth that he knew about me that was so embarrassing
22 and shameful was that I had been paying for sex. . . . I
23 was afraid that he would post that truthful information to
his Twitter account and that that information, with the way
24 the internet works today, would spread like wildfire
25 In other words, if something, either a lie about me
were published on social media or an embarrassing truth,
26 then, even if that was posted for a matter of hours, people
could, for example, retweet it. They could blog about it.
They could do any number of things almost instantly, and
you'd never really be able to get that negative
information, whether it was the truth or lie, back.

27
28 (RT, 296-2, 85:24 - 87:4).

1 **2. Defendant's history and characteristics**

2 As noted above, defendant's text messages to D.B. provide a
3 window into defendant's mindset. Although D.B. was the wealthy
4 executive with the high-profile connections, the defendant "[held]
5 the cards," and he knew it. Defendant had the perfect extortion
6 victim in D.B.: someone with a lot of money and a lot to hide. And
7 defendant was well positioned to exploit D.B., given his own status
8 as a well-known pornography actor with a large Twitter following.
9 Ultimately, defendant did exploit D.B.'s fears to enrich himself and,
10 it seemed, he hoped to keep coming back to the well.

11 Once defendant was arrested, he continued to victimize D.B. As
12 noted above, defendant released a statement accusing D.B. of rape and
13 even went so far as to accuse D.B. of having sex with under-age
14 minors. He did so while detained in the Metropolitan Detention
15 Center and, all the while, seeking release. Moreover, defendant's
16 prisons email suggests that defendant sought to prevent or at least
17 discourage witnesses from testifying at trial. (Ex. 5.) And still
18 today, defendant has not shown any remorse for his actions. Although
19 defendant tried to get an "apology" to D.B. through his girlfriend
20 soon after he was arrested, that apology was a transparent attempt to
21 get D.B. to "drop" the charges against him. (Ex. 6 (redacted).)
22 Notably, at a detention hearing on April 2, 2015, Magistrate Judge
23 Wilner characterized the "apology" as "bizarre" and stated that he
24 doubted the "legitimacy of the statements" defendant made in the
25 email.

26 In light of defendant's egregious and dangerous conduct, his
27 exploitation of the victim, and his lack of remorse, a sentence of 80
28 months is a fair, just and appropriate.

1 **B. The Court should sentence defendant to 80 months to reflect**
2 **the seriousness of the offense, deter others from**
3 **committing extortion by threat to reputation via social**
4 **media, and promote respect for the law.**

5 As the Court knows from the pre-trial litigation in this case,
6 there are few published federal cases addressing Hobbs Act extortion
7 by non-violent threat to reputation, and, to the government's
8 knowledge, none involving social media. In many ways, this case was
9 a first for our District. With the growing popularity of social
10 media, however, and rapid changes in technology, it likely will not
11 be the last. A sentence of 80 months of imprisonment would reflect
12 the serious nature of the crime of extortion, even when committed by
13 "non-violent" threat to reputation. It would also deter others from
14 committing such crimes via social media and promote respect for the
15 law.

16 Defendant's conduct in this case was extremely serious. The
17 nature of the threat was serious in that defendant threatened to
18 expose the most intimate details of the victim's life to the public
19 in attempt to shame and humiliate him. Defendant was prepared to
20 "bring down [D.B.'s] house" by opening up the most private part of
21 D.B.'s life - the part D.B. most wanted to keep secret. Moreover,
22 the amount of money defendant obtained and demanded from D.B. was
23 significant. Defendant managed to get \$500,000 and a \$180,000 car
24 from the victim, before coming back to D.B. and demanding another
25 million. Defendant was not operating in small dollar amounts. He
26 committed a serious crime at a high level and he should be punished
27 commensurately.

1 Finally, a sentence of 80 months would promote respect for the
2 law. This is not a "social media embarrassment case." This is a
3 high-dollar extortion case involving the intimate details of the
4 victim's private life – one that came to involve a firearm. A
5 sentence of 80 months would send a message that the law will not
6 tolerate extortion, even when it is "non-violent," but especially
7 where the defendant brings a firearm and thereby sets up the
8 potential for a violent and disastrous outcome.

9 **V. CONCLUSION**

10 For all of the foregoing reasons, the government respectfully
11 recommends that the Court sentence defendant to 80 months of
12 imprisonment, followed by a three-year period of supervised release.
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